

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

CC Docket No. 96-98

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

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May 16, 1996

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The American Public Communications Council ("APCC") submits the following comments in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-182, released April 19, 1996 ("Notice"). APCC's comments focus on the "resale at wholesale rates" provision of Section 251(c)(4) of the Act. 47 U.S.C. § 251(c)(4). See also Notice, ¶¶ 172-188.

STATEMENT OF INTEREST

APCC is a national trade association comprising over 1,200 manufacturers and providers of independent public payphones ("IPPs"). APCC's purpose is to promote fair competition and high standards of service in the payphone and public communications markets. APCC has actively participated in every major FCC proceeding affecting payphones.

DISCUSSION

The Commission should make clear that Section 251(c)(4) allows resellers – including IPP providers – to obtain the relevant ILEC classification of service that is required in many states to be used by customers that operate non-LEC payphones – at wholesale rates in order to resell the service to their customers.¹

Section 251(c)(4) requires ILECs:

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

"Telecommunications carrier" is defined by the Act as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. § 153(44)(emphasis added). "Aggregator", in turn, is defined as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(2). The Commission elsewhere has ruled that IPP providers are "aggregators" insofar as they exercise control over payphones. Policies and Rules Concerning Operator Service Providers, Report and Order, 6 FCC Rcd 2744 (1991), recon. 7 FCC Rcd 3882 (1992).

¹ IPP providers and services provided to them, are also referred to by other terms and associated acronyms, such as customer-owned-currency-operated telephone ("COCOT") providers, competitive payphone providers ("CPP"), coin-operated pay telephone ("COPT") providers, non-local exchange carrier pay telephone service ("NPATS") providers and private payphone providers ("PPP").

Thus, IPP providers in their role as "aggregators" are not "telecommunications carriers." Therefore, services provided to interconnect IPPs (as well as other "aggregator" telephones) are clearly included among those services subject to the Act's requirement for ILECs to offer retail services for resale at wholesale rates.

The Commission also should make clear that IPP providers themselves are not disqualified from obtaining COCOT services at wholesale rates. The language of Section 251(c)(4) does not place any limitation on the kinds of entities that can subscribe to retail services at wholesale rates and offer those services for resale. Therefore, "aggregators" are not precluded from taking service at wholesale rates. Furthermore, even if there is an implied limitation that only "telecommunications carriers" can subscribe to wholesale services, IPP providers can qualify as "telecommunications carriers." Even though IPP providers are aggregators in their role as owners of payphones, IPP providers also act as "telecommunications carriers" by reselling services obtained from ILECs. Therefore, IPP providers are entitled to obtain COCOT services at wholesale rates for resale to their customers.

This result is entirely consistent with the purposes of the Act. IPP providers have long been limited in the kinds of services they could obtain from LECs and have been charged unnecessarily high rates for such services, while being constrained by regulatory or market conditions to charge end user rates that do not substantially exceed those of the ILEC's own payphones. In a number of states, public utility commissions have found that the rates ILECs charge to IPP providers, if imputed to the ILEC's own payphone operations, would result in the ILEC's payphone operations operating at a

loss. See Order of the Illinois Commerce Commission, *Independent Coin Payphone Association v. Illinois Bell Tel. Co.*, Docket No. 88-0412, June 7, 1995; Order of the Washington Utilities and Transportation Commission, *Northwest Payphone Association v. U.S. West Communications, Inc.*, Docket No. UT-920174, March 17, 1995 ("WUTC Order"). The combination of high ILEC interconnection rates and low end user rates at ILEC payphones subjects IPP providers to a classic "price squeeze." See WUTC Order.

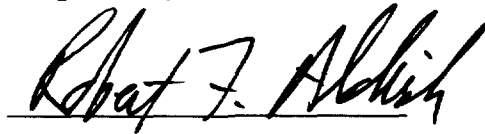
The purpose of the Act is to promote all forms of telecommunications competition, including competition in the provision of payphone service. See 47 U.S.C. § 276. Therefore, it furthers the purposes of the Act for IPP providers to have the ability to obtain relief from conditions that burden competition by interconnecting at "wholesale" rates in lieu of the "retail" rates currently assessed for interconnection of IPPs.

CONCLUSION

The Commission's regulations implementing Section 251(c)(4) of the Act should make clear that service to IPPs is included among the retail services that must be available for resale at wholesale rates.

May 16, 1996

Respectfully submitted,

A handwritten signature in black ink, reading "Robert F. Aldrich", written over a horizontal line.

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